

SENATE BILL 672

Q3, C8

11r2490
CF HB 1148

By: ~~Senator Kasemeyer~~ Senators Kasemeyer, Brinkley, Colburn, Currie, DeGrange, Edwards, Jones-Rodwell, King, Klausmeier, Madaleno, Manno, McFadden, Peters, and Robey

Introduced and read first time: February 4, 2011
Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 22, 2011

CHAPTER _____

1 AN ACT concerning

2 ~~Income Tax~~ Maryland Film Production Activity Credit Employment Act of
3 2011

4 FOR the purpose of repealing the Film Production Rebate Program; allowing certain
5 film production entities to claim a credit against the State income tax for
6 certain costs incurred for certain film production activities within the State;
7 requiring a film production entity to apply to the Department of Business and
8 Economic Development to be a qualified film production entity; requiring the
9 Secretary of Business and Economic Development to determine if a film
10 production entity qualifies for the credit; requiring that to qualify for the credit
11 certain estimated costs incurred in the State must exceed a certain amount;
12 authorizing the Secretary to require the entity to provide certain information;
13 authorizing the Secretary to require that certain information be verified by an
14 independent auditor; requiring a qualified film production entity to apply for a
15 tax credit certificate from the Department; authorizing the Secretary to provide
16 for the form of the application; requiring the application to include certain
17 information; requiring the Secretary to determine the total direct costs that
18 qualify for the tax credit and issue a tax credit certificate for a certain
19 percentage of the total direct costs; limiting the total credit amounts for which
20 the Secretary may issue initial tax credit certificates for each fiscal year;
21 requiring the Secretary to notify the Comptroller of the amount of any tax credit
22 certificate issued; providing that the total direct costs for a film production
23 activity may not include the wages of an employee if the employee's wages

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 exceed a certain amount; requiring that each year the Department report to the
2 Governor and the General Assembly certain information regarding the tax
3 credit and certain economic impacts of the credit; requiring the Department and
4 the Comptroller to jointly adopt certain regulations; defining certain terms;
5 providing for the application of this Act; and generally relating to an income tax
6 credit for certain film production activities.

7 BY repealing

8 Article – Economic Development

9 Section 4–401 through 4–407 and the subtitle “Subtitle 4. Film Production
10 Rebate Fund”

11 Annotated Code of Maryland

12 (2008 Volume and 2010 Supplement)

13 BY adding to

14 Article – Tax – General

15 Section 10–729

16 Annotated Code of Maryland

17 (2010 Replacement Volume)

18 Preamble

19 WHEREAS, The State of Maryland has a long and successful history of movie
20 making in the State; and

21 WHEREAS, Producing large scale movies in Maryland provides strong stimulus
22 to the State’s economy by creating jobs for Maryland workers and generating sales by
23 Maryland businesses; and

24 WHEREAS, Significant amounts of State and local tax revenues are generated
25 by the economic activity created from producing films in Maryland; and

26 WHEREAS, Maryland’s geographic, cultural, physical, and historic attributes
27 provide many favorable settings for film production in the State; and

28 WHEREAS, Key decision makers in the movie industry have demonstrated a
29 preference for and commitment to making movies in the State; and

30 WHEREAS, The scope of film production activity is broad and diverse resulting
31 in substantial expenditures within a state on local companies and businesses that
32 become part of the film production activity; and

33 WHEREAS, In addition to economic benefits derived from film production
34 activity, the long-term benefits include development and establishment of spin-off
35 film production activities such as editing, sound production, creative and artistic
36 activities, development of permanent facilities such as sound stages and studios and

1 cottage industries related to independent movie making, documentaries, advertising,
2 and other film and video activity; and

3 WHEREAS, Other states have established proven models for attracting film
4 production activity to their states to the detriment of such activity in Maryland; and

5 WHEREAS, Maryland can adopt such proven methods resulting in the
6 immediate generation of new economic activity within the State, including the
7 derivative benefits described above; and

8 WHEREAS, Maryland's economy and Maryland's State and local tax revenues
9 would receive the direct benefit of these new activities prior to issuance of the tax
10 credit certificates enabling the film production entity to claim the tax credit; and

11 WHEREAS, The production of television series in Maryland results in even
12 greater positive economic benefits to the State, providing extended employment for
13 Maryland residents and sustained revenues for local companies providing goods and
14 services to production entities producing television series in Maryland; and

15 WHEREAS, The Governor and the General Assembly find and declare that the
16 net benefit to Maryland as a result of this increased economic activity is positive and is
17 necessary for strengthening the State's economic condition; now, therefore,

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Economic Development**

21 **[Subtitle 4. Film Promotion Rebate Fund.]**

22 [4–401.

23 (a) In this subtitle the following words have the meanings indicated.

24 (b) (1) “Film production activity” means the production of a film or video
25 project that is intended for nationwide commercial distribution.

26 (2) “Film production activity” includes the production of:

27 (i) a feature film;

28 (ii) a television project;

29 (iii) a commercial;

30 (iv) a corporate film;

- 1 (v) an infomercial;
- 2 (vi) a music video;
- 3 (vii) a digital project;
- 4 (viii) an animation project; and
- 5 (ix) a multimedia project.

6 (3) “Film production activity” does not include:

- 7 (i) production of a:
 - 8 1. student film;
 - 9 2. noncommercial personal video;
 - 10 3. sports broadcast;
 - 11 4. broadcast of a live event; or
 - 12 5. talk show; or

13 (ii) any activity not necessary to and undertaken directly and
14 exclusively for the making of a master film, tape, or image.

15 (c) “Fund” means the Film Production Rebate Fund established under §
16 4–405 of this subtitle.

17 (d) “Qualified film production entity” means an entity that:

18 (1) is carrying out a film production activity; and

19 (2) the Secretary determines to be eligible for the rebate provided
20 under this subtitle in accordance with § 4–403 of this subtitle.

21 (e) (1) “Total direct costs”, with respect to a film production activity,
22 means the total costs incurred in the State that are necessary to carry out the film
23 production activity.

24 (2) “Total direct costs” includes costs incurred for:

- 25 (i) employee wages and benefits;
- 26 (ii) fees for services;

- 1 (iii) acquiring or leasing property; and
2 (iv) any other expense necessary to carry out a film production
3 activity.]

4 [4-402.

5 It is the intent of the General Assembly that the rebate provided under this
6 subtitle is for the purpose of:

- 7 (1) increasing film production activity in the State;
8 (2) bringing economic benefits to the residents of the State; and
9 (3) generating increased employment opportunities for the residents of
10 the State.]

11 [4-403.

12 (a) To be eligible for a rebate under this subtitle, a qualified film production
13 entity shall incur total direct costs of at least \$500,000 in the State for a single film
14 production activity.

15 (b) To qualify for the rebate provided under this subtitle, a film production
16 entity shall notify the Department of the intent of the entity to seek the rebate before
17 beginning the film production activity.

18 (c) To apply for the rebate, the film production entity shall submit to the
19 Secretary:

20 (1) a description of the anticipated film production activity, including
21 its projected total budget with estimated number of employees and total wages, and
22 anticipated dates for carrying out the major elements of the film production activity;
23 and

24 (2) any other information that the Secretary requires related to the
25 film production activity and the entity seeking the rebate.

26 (d) The Secretary may require any information required under this section to
27 be verified by an independent auditor that:

28 (1) the film production entity seeking the rebate certification selects
29 and pays for; and

30 (2) the Secretary approves.

1 (e) As a condition of applying for and receiving the rebate, the qualified film
2 production entity shall enter into a grant agreement with the Department that is
3 satisfactory to the Department.]

4 [4-404.

5 The Department may grant to a qualified film production entity, from the Fund,
6 a rebate not to exceed 25% of the total direct costs that the qualified film production
7 entity has paid for a particular film production activity.]

8 [4-405.

9 (a) There is a Film Production Rebate Fund in the Department.

10 (b) The Department shall administer the Fund.

11 (c) (1) The Fund is a special, nonlapsing fund that is not subject to
12 reversion under § 7-302 of the State Finance and Procurement Article.

13 (2) The Treasurer shall hold the Fund separately and the Comptroller
14 shall account for the Fund.

15 (d) The Fund consists of:

16 (1) money appropriated by the State to the Fund;

17 (2) repayments of any defaulted grant from the Fund; and

18 (3) any other money made available to the Department for the Fund.

19 (e) The Department may use the Fund to:

20 (1) make grants to qualified film production entities as rebates in
21 accordance with this subtitle; and

22 (2) pay the administrative, legal, and actuarial expenses of the Fund.

23 (f) (1) The Treasurer shall invest the money of the Fund in the same
24 manner as other money of the State may be invested.

25 (2) Any investment earnings of the Fund shall be credited to the
26 Fund.]

27 [4-406.

- 1 5. AN INFOMERCIAL;
- 2 6. A MUSIC VIDEO;
- 3 7. A DIGITAL PROJECT;
- 4 8. AN ANIMATION PROJECT; OR
- 5 9. A MULTIMEDIA PROJECT.

6 (III) “FILM PRODUCTION ACTIVITY” DOES NOT INCLUDE
7 PRODUCTION OF:

- 8 1. A STUDENT FILM;
- 9 2. A NONCOMMERCIAL PERSONAL VIDEO;
- 10 3. A SPORTS BROADCAST;
- 11 4. A BROADCAST OF A LIVE EVENT;
- 12 5. A TALK SHOW;
- 13 6. A VIDEO, COMPUTER, OR SOCIAL NETWORKING
14 GAME; OR
- 15 7. PORNOGRAPHY.

16 (4) “PORNOGRAPHY” MEANS ANY PRODUCTION FOR WHICH
17 RECORDS ARE REQUIRED TO BE MAINTAINED UNDER § 2257 OF TITLE 18,
18 U.S.C., WITH RESPECT TO ANY PERFORMER IN SUCH PRODUCTION ENGAGING
19 IN SEXUALLY EXPLICIT CONDUCT.

20 (5) “QUALIFIED FILM PRODUCTION ENTITY” MEANS AN ENTITY
21 THAT:

22 (I) IS CARRYING OUT A FILM PRODUCTION ACTIVITY; AND

23 (II) THE SECRETARY DETERMINES TO BE ELIGIBLE FOR THE
24 TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF
25 THIS SECTION.

26 (6) “SECRETARY” MEANS THE SECRETARY OF BUSINESS AND
27 ECONOMIC DEVELOPMENT.

1 **(7) “TELEVISION SERIES” MEANS A GROUP OF PROGRAM**
2 **EPISODES INTENDED FOR TELEVISION BROADCAST OR TRANSMISSION WITH A**
3 **COMMON SERIES TITLE, WITH OR WITHOUT A PREDETERMINED NUMBER OF**
4 **EPISODES, AND SHALL INCLUDE A MINISERIES AND A PILOT EPISODE**
5 **PRODUCED FOR AN INTENDED TELEVISION SERIES.**

6 **(8) (I) “TOTAL DIRECT COSTS”, WITH RESPECT TO A FILM**
7 **PRODUCTION ACTIVITY, MEANS THE TOTAL COSTS INCURRED IN THE STATE**
8 **THAT ARE NECESSARY TO CARRY OUT THE FILM PRODUCTION ACTIVITY.**

9 **(II) “TOTAL DIRECT COSTS” INCLUDES COSTS INCURRED**
10 **FOR:**

- 11 1. **EMPLOYEE WAGES AND BENEFITS;**
- 12 2. **FEES FOR SERVICES;**
- 13 3. **ACQUIRING OR LEASING PROPERTY; AND**
- 14 4. **ANY OTHER EXPENSE NECESSARY TO CARRY OUT**
15 **A FILM PRODUCTION ACTIVITY, INCLUDING COSTS ASSOCIATED WITH:**
 - 16 A. **SET CONSTRUCTION AND OPERATION;**
 - 17 B. **WARDROBE, MAKEUP, AND RELATED SERVICES;**
 - 18 C. **PHOTOGRAPHY AND SOUND SYNCHRONIZATION,**
19 **LIGHTING, AND RELATED SERVICES AND MATERIALS;**
 - 20 D. **EDITING AND RELATED SERVICES, INCLUDING**
21 **FILM PROCESSING, TRANSFERS OF FILM TO TAPE OR DIGITAL FORMAT, SOUND**
22 **MIXING, COMPUTER GRAPHIC SERVICES, SPECIAL EFFECTS SERVICES, AND**
23 **ANIMATION SERVICES;**
 - 24 E. **SALARY, WAGES, AND OTHER COMPENSATION**
25 **INCLUDING RELATED BENEFITS, FOR WORK PERFORMED IN THE STATE, PAID**
26 **TO PERSONS EMPLOYED IN THE PRODUCTION, WRITERS, DIRECTORS, AND**
27 **PRODUCERS;**
 - 28 F. **RENTAL OF FACILITIES IN THE STATE AND**
29 **EQUIPMENT USED IN THE STATE;**
 - 30 G. **LEASING OF VEHICLES;**

1 **H. FOOD AND LODGING;**

2 **I. MUSIC, IF PERFORMED, COMPOSED, OR**
3 **RECORDED BY A MARYLAND MUSICIAN OR PUBLISHED BY A PERSON OR**
4 **COMPANY DOMICILED IN MARYLAND;**

5 **J. TRAVEL EXPENSES INCURRED TO BRING PERSONS**
6 **EMPLOYED, EITHER DIRECTLY OR INDIRECTLY, IN THE PRODUCTION OF THE**
7 **PROJECT TO MARYLAND, BUT NOT INCLUDING EXPENSES OF THESE PERSONS**
8 **DEPARTING FROM MARYLAND; AND**

9 **K. LEGAL AND ACCOUNTING SERVICES PERFORMED**
10 **BY ATTORNEYS OR ACCOUNTANTS LICENSED IN MARYLAND.**

11 **(III) “TOTAL DIRECT COSTS” DOES NOT INCLUDE ANY**
12 **SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN**
13 **INDIVIDUAL WHO RECEIVES MORE THAN \$1,000,000 IN SALARY, WAGES, OR**
14 **OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION WITH ANY**
15 **FILM PRODUCTION ACTIVITY.**

16 **(B) (1) A QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A CREDIT**
17 **AGAINST THE STATE INCOME TAX FOR FILM PRODUCTION ACTIVITIES IN THE**
18 **STATE IN AN AMOUNT EQUAL TO THE AMOUNT STATED IN THE FINAL TAX**
19 **CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR FILM PRODUCTION**
20 **ACTIVITIES.**

21 **(2) IF THE TAX CREDIT ALLOWED UNDER THIS SECTION IN ANY**
22 **TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE**
23 **QUALIFIED FILM PRODUCTION ENTITY FOR THAT TAXABLE YEAR, THE**
24 **QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A REFUND IN THE AMOUNT**
25 **OF THE EXCESS.**

26 **(C) (1) BEFORE BEGINNING A FILM PRODUCTION ACTIVITY, A FILM**
27 **PRODUCTION ENTITY SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION TO**
28 **QUALIFY AS A FILM PRODUCTION ENTITY.**

29 **(2) THE APPLICATION SHALL DESCRIBE THE ANTICIPATED FILM**
30 **PRODUCTION ACTIVITY, INCLUDING:**

31 **(I) THE PROJECTED TOTAL BUDGET;**

32 **(II) THE ESTIMATED NUMBER OF EMPLOYEES AND TOTAL**
33 **WAGES TO BE PAID; AND**

1 (III) THE ANTICIPATED DATES FOR CARRYING OUT THE
2 MAJOR ELEMENTS OF THE FILM PRODUCTION ACTIVITY.

3 (3) TO QUALIFY AS A FILM PRODUCTION ENTITY, THE ESTIMATED
4 TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$500,000.

5 (4) THE APPLICATION SHALL INCLUDE ANY OTHER INFORMATION
6 REQUIRED BY THE SECRETARY.

7 (5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED
8 IN AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED
9 AND PAID FOR BY THE FILM PRODUCTION ENTITY SEEKING CERTIFICATION.

10 (6) THE SECRETARY SHALL:

11 (I) DETERMINE IF THE FILM PRODUCTION ENTITY
12 QUALIFIES FOR THE CREDIT UNDER THIS SECTION; AND

13 (II) NOTIFY THE COMPTROLLER OF THE ESTIMATED
14 AMOUNT OF TOTAL DIRECT COSTS AND THE TAXABLE YEAR THE CREDIT WILL BE
15 CLAIMED.

16 (D) (1) AFTER COMPLETION OF THE FILM PRODUCTION ACTIVITY, A
17 QUALIFIED FILM PRODUCTION ENTITY SHALL APPLY TO THE DEPARTMENT FOR
18 A TAX CREDIT CERTIFICATE.

19 (2) THE APPLICATION SHALL BE ON A FORM REQUIRED BY THE
20 SECRETARY AND SHALL INCLUDE:

21 (I) PROOF OF THE TOTAL DIRECT COSTS THAT QUALIFY
22 FOR THE TAX CREDIT; AND

23 (II) THE NUMBER OF EMPLOYEES HIRED AND WAGES PAID.

24 (3) SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE
25 SECRETARY SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR
26 THE TAX CREDIT AND ISSUE A TAX CREDIT CERTIFICATE FOR:

27 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH,
28 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT; AND

29 (II) FOR A TELEVISION SERIES, 27% OF THE TOTAL DIRECT
30 COSTS THAT QUALIFY FOR THE TAX CREDIT.

1 **(4) THE SECRETARY SHALL NOTIFY THE COMPTROLLER OF THE**
2 **AMOUNT OF A TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION.**

3 **(E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT**
4 **SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE**
5 **GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON:**

6 **(1) THE NUMBER OF FILM PRODUCTION ENTITIES SUBMITTING**
7 **APPLICATIONS UNDER SUBSECTION (C) OF THIS SECTION; ~~AND~~**

8 **(2) THE NUMBER AND AMOUNT OF TAX CREDIT CERTIFICATES**
9 **ISSUED UNDER SUBSECTION (D) OF THIS SECTION;**

10 **(3) THE NUMBER OF LOCAL TECHNICIANS, ACTORS, AND EXTRAS**
11 **HIRED FOR FILM PRODUCTION ACTIVITY DURING THE REPORTING PERIOD;**

12 **(4) A LIST OF COMPANIES DOING BUSINESS IN THE STATE,**
13 **INCLUDING HOTELS, THAT DIRECTLY PROVIDED GOODS OR SERVICES FOR FILM**
14 **PRODUCTION ACTIVITY DURING THE REPORTING PERIOD; AND**

15 **(5) ANY OTHER INFORMATION THAT INDICATES THE ECONOMIC**
16 **BENEFITS TO THE STATE RESULTING FROM FILM PRODUCTION ACTIVITY**
17 **DURING THE REPORTING PERIOD.**

18 **(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
19 **SUBSECTION, FOR ANY FISCAL YEAR, THE SECRETARY MAY NOT ISSUE TAX**
20 **CREDIT CERTIFICATES FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING**
21 **MORE THAN \$15,000,000.**

22 **(2) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE TAX**
23 **CREDIT CERTIFICATES ISSUED BY THE SECRETARY TOTAL LESS THAN**
24 **\$15,000,000 IN ANY FISCAL YEAR, ANY EXCESS AMOUNT MAY BE CARRIED**
25 **FORWARD AND ISSUED UNDER TAX CREDIT CERTIFICATES IN A SUBSEQUENT**
26 **FISCAL YEAR.**

27 **(G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT**
28 **REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO**
29 **SPECIFY CRITERIA AND PROCEDURES FOR THE APPLICATION FOR, APPROVAL**
30 **OF, AND MONITORING OF CONTINUING ELIGIBILITY FOR THE TAX CREDIT**
31 **UNDER THIS SECTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2011, and shall be applicable to all taxable years beginning after December 31,
3 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.